

AMENDED IN SENATE JUNE 28, 2011

AMENDED IN SENATE JUNE 1, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1422**

**Introduced by Assembly Member Perea**

March 22, 2011

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*An act to add and repeal Section 6377 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy. An act to add Section 7044.3 to the Business and Professions Code, to amend Sections 11005, 11005.2, 11007.1, 11011.13, and 14255 of the Government Code, to amend Section 1720 of the Labor Code, and to amend Sections 10106, 10107, and 10295 of the Public Contract Code, relating to high-speed rail.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1422, as amended, Perea. ~~Sales and use taxes: exemption: manufacturing and research and development.~~ *High-speed rail.*

*Existing law, the California High-Speed Train Act, creates the High-Speed Rail Authority to develop and implement a high-speed train system in the state, with specified powers and duties. Existing law, the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, approved by the voters as Proposition 1A at the November 4, 2008, general election, provides for the issuance of \$9.95 billion in general obligation bonds for high-speed rail and related purposes.*

*Existing law generally requires the approval of the Department of General Services before a state agency may acquire, hire, dispose of, or let real property in fee or in a lesser interest, subject to certain exceptions, including real property obtained for highway purposes by*

*the Department of Transportation. Existing law requires the Department of General Services to inventory state-owned property, other than property owned by the Department of Transportation and certain other state agencies. Existing law provides that property acquired by the Department of Transportation for highway purposes and leased back for commercial or business uses to the former owner for a term exceeding 6 months may be insured for loss by fire at the request of the former owner with the premium for insurance included in the rent.*

*This bill would enact similar exceptions, authorizations, and exemptions relative to real property obtained for high-speed rail purposes by the High-Speed Rail Authority. The bill would make various other additional conforming changes.*

*Existing law provides that the Department of General Services is the responsible agency for projects under the Public Contract Code, and generally requires all contracts entered into by state agencies to first be approved by the department, except with respect to projects and contracts under the jurisdiction of other specified state agencies.*

*This bill would provide that the High-Speed Rail Authority is the responsible agency for projects and contracts under its jurisdiction and does not require the approval of the Department of General Services in that regard.*

*Existing law defines “public works” for purposes of requirements relating to wages, working hours, and other aspects of employment.*

*This bill would include high-speed rail systems of the High-Speed Rail Authority within the definition of public works for the purposes described above.*

*Existing law provides for the licensing and regulation of contractors by the Contractors’ State License Board.*

*This bill would provide that these provisions do not apply to an entity that is a party to a franchise contract with the High-Speed Rail Authority if all actual construction work under the franchise contract is performed by licensed contractors.*

~~The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law provides various exemptions from those taxes.~~

~~This bill would exempt from those taxes the sale of, and the storage, use, or other consumption in this state, of tangible personal property,~~

as defined, purchased for use by a qualified person, as defined, primarily in any stage of manufacturing, processing, refining, fabricating, or recycling of property; in research and development; to maintain, repair, measure, or test specified property; and by a contractor for use in a construction contract with a qualified person, as specified.

~~The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and the Transactions and Use Tax Law authorizes districts, as specified, to impose transactions and use taxes in conformity with the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated in these laws.~~

~~This bill would specify that this exemption does not apply to local sales and use taxes, transactions and use taxes, specified state sales and use taxes. This bill would further specify, for a qualified person that is not a new trade or business, that this exemption only applies to 20% of other specified state sales and use taxes.~~

~~This bill would take effect immediately as a tax levy, but would be operative only so long as state sales and use taxes at the rate of 1% that are enacted during the 2011–12 Legislative Sessions are operative.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 7044.3 is added to the Business and
- 2     Professions Code, to read:
- 3     7044.3. This chapter does not apply to an entity that is a party
- 4     to a franchise contract with the High-Speed Rail Authority under
- 5     the authority of Chapter 3 (commencing with Section 185030) of
- 6     Division 19.5 of the Public Utilities Code, provided all actual
- 7     construction work under the franchise contract is performed by
- 8     contracts that are duly licensed at the time of contractors and
- 9     performance of the work.
- 10    SEC. 2. Section 11005 of the Government Code is amended to
- 11    read:
- 12    11005. (a) Unless the Legislature specifically provides that
- 13    approval is not required, every gift or dedication to the state of
- 14    personal property, or every gift to the state of real property in fee
- 15    or in any lesser estate or interest, shall be approved by the Director
- 16    of Finance, and every contract for the acquisition or hiring of real

1 property in fee or in any lesser estate or interest, entered into by  
2 or on behalf of the state, shall be approved by the Director of  
3 General Services. Any contract entered into in violation of this  
4 section is void. This section applies to any state agency that, by  
5 general or specific statute, is expressly or impliedly authorized to  
6 enter into transactions referred to in this section.

7 (b) This section does not apply (1) to unconditional gifts of  
8 money, (2) to the acquisition or hiring by the Department of  
9 Transportation of real property in fee or in any lesser estate or  
10 interest for highway purposes, but does apply to the hiring by that  
11 department of office space in any office building, (3) to contracts  
12 entered into under the authority of Chapter 4 (commencing with  
13 Section 11770) of Part 3 of Division 2 of the Insurance Code, (4)  
14 to the receipt of donated, unencumbered personal property from  
15 private sources received in conjunction with the administration of  
16 the Federal Surplus Personal Property Program by the Department  
17 of General Services, (5) to the receipt of gifts of personal property  
18 in the form of interpretive or historical objects, each valued at  
19 fifteen thousand dollars (\$15,000) or less, by the Department of  
20 Parks and Recreation, ~~or~~ (6) to the acceptance by the State Coastal  
21 Conservancy of offers to dedicate public accessways made pursuant  
22 to Division 20 (commencing with Section 30000) of the Public  
23 Resources Code, *or (7) to the acquisition or hiring by the*  
24 *High-Speed Rail Authority of real property in fee or in any lesser*  
25 *estate or interest for high-speed rail purposes, but does apply to*  
26 *the hiring by that authority of office space in any office building.*

27 *SEC. 3. Section 11005.2 of the Government Code is amended*  
28 *to read:*

29 11005.2. Unless the Legislature specifically provides that  
30 approval by the Director of General Services is not required, every  
31 conveyance, contract, or agreement whereby an interest of the state  
32 in any real property is conveyed, demised, or let to any person,  
33 shall, before the conveyance, contract, or agreement is executed  
34 or entered into, be approved by the Director of General Services.  
35 Any conveyance, contract, or agreement executed or entered into  
36 in violation of this section is void. This section shall apply to any  
37 state agency which, by general or specific statute, is expressly or  
38 impliedly authorized to enter into transactions referred to in this  
39 section.

1 This section does not apply to real property acquired by the  
2 Department of Transportation for highway purposes, *real property*  
3 *acquired by the High-Speed Rail Authority for high-speed rail*  
4 *purposes*, or real property administered by the State Lands  
5 Commission, the Controller, or the State Compensation Insurance  
6 Fund.

7 *SEC. 4. Section 11007.1 of the Government Code is amended*  
8 *to read:*

9 11007.1. (a) The Department of Transportation, when it has  
10 acquired title to any real property for highway purposes and leases  
11 ~~such that~~ property for commercial or business uses to the former  
12 owner for a term exceeding six months, may secure insurance  
13 against the risk of damage or destruction by fire where the former  
14 owner requests this coverage and the premium therefor is included  
15 in the rental agreed to be paid.

16 (b) *The High-Speed Rail Authority, when it has acquired title*  
17 *to any real property for high-speed rail purposes and leases that*  
18 *property for commercial or business uses to the former owner for*  
19 *a term exceeding six months, may secure insurance against the*  
20 *risk of damage or destruction by fire where the former owner*  
21 *requests this coverage and the premium therefor is included in the*  
22 *rental agreed to be paid.*

23 *SEC. 5. Section 11011.13 of the Government Code is amended*  
24 *to read:*

25 11011.13. For purposes of Section 11011.15, the following  
26 definitions shall apply:

27 (a) "Agency" means a state agency, department, division,  
28 bureau, board, commission, district agricultural association, and  
29 the California State University. "Agency" does not mean the  
30 Legislature, the University of California, the State Lands  
31 Commission, ~~or~~ the Department of Transportation, *or the*  
32 *High-Speed Rail Authority.*

33 (b) "Fully utilized" means that 100 percent of the property is  
34 being appropriately utilized by a program of an agency every  
35 business day of the year.

36 (c) "Partially utilized" means one or more of the following:

37 (1) Less than 100 percent of the property is appropriately utilized  
38 by a program of an agency.

39 (2) The property is not used every business day of the year by  
40 an agency.

1 (3) The property is used by other nonstate governmental entities  
2 or private parties.

3 (d) “Excess land” means property that is no longer needed for  
4 either an existing or ongoing state program or a function of an  
5 agency.

6 *SEC. 6. Section 14255 of the Government Code is amended to*  
7 *read:*

8 14255. Whenever provision is made by law for any project  
9 ~~which~~ *that* is not under the jurisdiction of the Department of Water  
10 Resources, the Department of Boating and Waterways pursuant  
11 to Article 2.5 (commencing with Section 65) of Chapter 2 of  
12 Division 1 of the Harbors and Navigation Code, the Department  
13 of Corrections pursuant to Chapter 11 (commencing with Section  
14 7000) of Title 7 of Part 3 of the Penal Code, *the High-Speed Rail*  
15 *Authority*, or the Department of General Services, the project shall  
16 be under the sole charge and direct control of the Department of  
17 Transportation.

18 *SEC. 7. Section 1720 of the Labor Code is amended to read:*

19 1720. (a) As used in this chapter, “public works” means:

20 (1) Construction, alteration, demolition, installation, or repair  
21 work done under contract and paid for in whole or in part out of  
22 public funds, except work done directly by any public utility  
23 company pursuant to order of the Public Utilities Commission or  
24 other public authority. For purposes of this paragraph,  
25 “construction” includes work performed during the design and  
26 preconstruction phases of construction including, but not limited  
27 to, inspection and land surveying work.

28 (2) Work done for irrigation, utility, reclamation, and  
29 improvement districts, and other districts of this type. “Public  
30 work” does not include the operation of the irrigation or drainage  
31 system of any irrigation or reclamation district, except as used in  
32 Section 1778 relating to retaining wages.

33 (3) Street, sewer, or other improvement work done under the  
34 direction and supervision or by the authority of any officer or  
35 public body of the state, or of any political subdivision or district  
36 thereof, whether the political subdivision or district operates under  
37 a freeholder’s charter or not.

38 (4) The laying of carpet done under a building lease-maintenance  
39 contract and paid for out of public funds.

1 (5) The laying of carpet in a public building done under contract  
2 and paid for in whole or in part out of public funds.

3 (6) Public transportation demonstration projects authorized  
4 pursuant to Section 143 of the Streets and Highways Code.

5 (7) *High-speed rail systems authorized pursuant to Division*  
6 *19.5 (commencing with Section 185000) of the Public Utilities*  
7 *Code.*

8 (b) For purposes of this section, “paid for in whole or in part  
9 out of public funds” means all of the following:

10 (1) The payment of money or the equivalent of money by the  
11 state or political subdivision directly to or on behalf of the public  
12 works contractor, subcontractor, or developer.

13 (2) Performance of construction work by the state or political  
14 subdivision in execution of the project.

15 (3) Transfer by the state or political subdivision of an asset of  
16 value for less than fair market price.

17 (4) Fees, costs, rents, insurance or bond premiums, loans, interest  
18 rates, or other obligations that would normally be required in the  
19 execution of the contract, that are paid, reduced, charged at less  
20 than fair market value, waived, or forgiven by the state or political  
21 subdivision.

22 (5) Money loaned by the state or political subdivision that is to  
23 be repaid on a contingent basis.

24 (6) Credits that are applied by the state or political subdivision  
25 against repayment obligations to the state or political subdivision.

26 (c) Notwithstanding subdivision (b):

27 (1) Private residential projects built on private property are not  
28 subject to the requirements of this chapter unless the projects are  
29 built pursuant to an agreement with a state agency, redevelopment  
30 agency, or local public housing authority.

31 (2) If the state or a political subdivision requires a private  
32 developer to perform construction, alteration, demolition,  
33 installation, or repair work on a public work of improvement as a  
34 condition of regulatory approval of an otherwise private  
35 development project, and the state or political subdivision  
36 contributes no more money, or the equivalent of money, to the  
37 overall project than is required to perform this public improvement  
38 work, and the state or political subdivision maintains no proprietary  
39 interest in the overall project, then only the public improvement  
40 work shall thereby become subject to this chapter.

(3) If the state or a political subdivision reimburses a private developer for costs that would normally be borne by the public, or provides directly or indirectly a public subsidy to a private development project that is de minimis in the context of the project, an otherwise private development project shall not thereby become subject to the requirements of this chapter.

(4) The construction or rehabilitation of affordable housing units for low- or moderate-income persons pursuant to paragraph (5) or (7) of subdivision (e) of Section 33334.2 of the Health and Safety Code that are paid for solely with moneys from a Low and Moderate Income Housing Fund established pursuant to Section 33334.3 of the Health and Safety Code or that are paid for by a combination of private funds and funds available pursuant to Section 33334.2 or 33334.3 of the Health and Safety Code do not constitute a project that is paid for in whole or in part out of public funds.

(5) “Paid for in whole or in part out of public funds” does not include tax credits provided pursuant to Section 17053.49 or 23649 of the Revenue and Taxation Code.

(6) Unless otherwise required by a public funding program, the construction or rehabilitation of privately owned residential projects is not subject to the requirements of this chapter if one or more of the following conditions are met:

(A) The project is a self-help housing project in which no fewer than 500 hours of construction work associated with the homes are to be performed by the homebuyers.

(B) The project consists of rehabilitation or expansion work associated with a facility operated on a not-for-profit basis as temporary or transitional housing for homeless persons with a total project cost of less than twenty-five thousand dollars (\$25,000).

(C) Assistance is provided to a household as either mortgage assistance, downpayment assistance, or for the rehabilitation of a single-family home.

(D) The project consists of new construction, or expansion, or rehabilitation work associated with a facility developed by a nonprofit organization to be operated on a not-for-profit basis to provide emergency or transitional shelter and ancillary services and assistance to homeless adults and children. The nonprofit organization operating the project shall provide, at no profit, not less than 50 percent of the total project cost from nonpublic



1 sources, excluding real property that is transferred or leased. Total  
2 project cost includes the value of donated labor, materials,  
3 architectural, and engineering services.

4 (E) The public participation in the project that would otherwise  
5 meet the criteria of subdivision (b) is public funding in the form  
6 of below-market interest rate loans for a project in which  
7 occupancy of at least 40 percent of the units is restricted for at  
8 least 20 years, by deed or regulatory agreement, to individuals or  
9 families earning no more than 80 percent of the area median  
10 income.

11 (d) Notwithstanding any provision of this section to the contrary,  
12 the following projects shall not, solely by reason of this section,  
13 be subject to the requirements of this chapter:

14 (1) Qualified residential rental projects, as defined by Section  
15 142 (d) of the Internal Revenue Code, financed in whole or in part  
16 through the issuance of bonds that receive allocation of a portion  
17 of the state ceiling pursuant to Chapter 11.8 of Division 1  
18 (commencing with Section 8869.80) of the Government Code on  
19 or before December 31, 2003.

20 (2) Single-family residential projects financed in whole or in  
21 part through the issuance of qualified mortgage revenue bonds or  
22 qualified veterans' mortgage bonds, as defined by Section 143 of  
23 the Internal Revenue Code, or with mortgage credit certificates  
24 under a Qualified Mortgage Credit Certificate Program, as defined  
25 by Section 25 of the Internal Revenue Code, that receive allocation  
26 of a portion of the state ceiling pursuant to Chapter 11.8 of Division  
27 1 (commencing with Section 8869.80) of the Government Code  
28 on or before December 31, 2003.

29 (3) Low-income housing projects that are allocated federal or  
30 state low-income housing tax credits pursuant to Section 42 of the  
31 Internal Revenue Code, Chapter 3.6 of Division 31 (commencing  
32 with Section 50199.4) of the Health and Safety Code, or Section  
33 12206, 17058, or 23610.5 of the Revenue and Taxation Code, on  
34 or before December 31, 2003.

35 (e) If a statute, other than this section, or a regulation, other than  
36 a regulation adopted pursuant to this section, or an ordinance or a  
37 contract applies this chapter to a project, the exclusions set forth  
38 in subdivision (d) do not apply to that project.

39 (f) For purposes of this section, references to the Internal  
40 Revenue Code mean the Internal Revenue Code of 1986, as

1 amended, and include the corresponding predecessor sections of  
2 the Internal Revenue Code of 1954, as amended.

3 (g) The amendments made to this section by either Chapter 938  
4 of the Statutes of 2001 or the act adding this subdivision shall not  
5 be construed to preempt local ordinances requiring the payment  
6 of prevailing wages on housing projects.

7 *SEC. 8. Section 10106 of the Public Contract Code is amended*  
8 *to read:*

9 10106. For purposes of this chapter:

10 (a) “Department” means any of the following:

11 (1) The Department of Water Resources as to any project under  
12 the jurisdiction of that department.

13 (2) The Department of Transportation as to any project under  
14 the jurisdiction of that department.

15 (3) The Department of Boating and Waterways as to any project  
16 under the jurisdiction of that department pursuant to Article 2.5  
17 (commencing with Section 65) of Chapter 2 of Division 1 of the  
18 Harbors and Navigation Code.

19 (4) The Department of Corrections and Rehabilitation—~~with~~  
20 ~~respect~~ *as* to any project under its jurisdiction pursuant to Chapter  
21 11 (commencing with Section 7000) of Title 7 of Part 3 of the  
22 Penal Code.

23 (5) The Military Department as to any project under the  
24 jurisdiction of that department.

25 (6) *The High-Speed Rail Authority as to any project under the*  
26 *jurisdiction of that authority.*

27 ~~(6)~~

28 (7) The Department of General Services as to all other projects.

29 (b) “Director” means the director of each department as defined  
30 herein respectively.

31 *SEC. 9. Section 10107 of the Public Contract Code is amended*  
32 *to read:*

33 10107. Whenever provision is made by law for any project  
34 that is not under the jurisdiction of the Department of Water  
35 Resources, the Department of Boating and Waterways pursuant  
36 to Article 2.5 (commencing with Section 65) of Chapter 2 of  
37 Division 1 of the Harbors and Navigation Code, the Department  
38 of Corrections and Rehabilitation pursuant to Chapter 11  
39 (commencing with Section 7000) of Title 7 of Part 3 of the Penal  
40 Code, the Department of Transportation, *the High-Speed Rail*

1 *Authority*, or the Military Department, the project shall be under  
2 the sole charge and direct control of the Department of General  
3 Services.

4 *SEC. 10. Section 10295 of the Public Contract Code is amended*  
5 *to read:*

6 10295. (a) All contracts entered into by any state agency for  
7 (1) the acquisition of goods or elementary school textbooks, (2)  
8 services, whether or not the services involve the furnishing or use  
9 of goods or are performed by an independent contractor, (3) the  
10 construction, alteration, improvement, repair, or maintenance of  
11 property, real or personal, or (4) the performance of work or  
12 services by the state agency for or in cooperation with any person,  
13 or public body, are void unless and until approved by the  
14 department. Every contract shall be transmitted with all papers,  
15 estimates, and recommendations concerning it to the department  
16 and, if approved by the department, shall be effective from the  
17 date of the approval.

18 (b) This section applies to any state agency that by general or  
19 specific statute is expressly or impliedly authorized to enter into  
20 transactions referred to in this section.

21 (c) This section does not apply to the following:

22 (1) Any transaction entered into by the Trustees of the California  
23 State University, by the Board of Governors of the California  
24 Community Colleges, or by a department under the State Contract  
25 Act or the California State University Contract Law.

26 (2) Any contract of a type specifically mentioned and authorized  
27 to be entered into by the Department of Transportation under  
28 Section 14035 or 14035.5 of the Government Code, Sections 99316  
29 to 99319, inclusive, of the Public Utilities Code, or the Streets and  
30 Highways Code.

31 (3) Any contract entered into by the Department of  
32 Transportation that is not funded by money derived by state tax  
33 sources but, rather, is funded by money derived from federal or  
34 local tax sources.

35 (4) Any contract entered into by the Department of Personnel  
36 Administration for state employee benefits, occupational health  
37 and safety, training services, or combination thereof.

38 (5) Any contract let by the Legislature.

1 (6) Any contract entered into under the authority of Chapter 4  
2 (commencing with Section 11770) of Part 3 of Division 2 of the  
3 Insurance Code.

4 (7) *Any contract entered into by the High-Speed Rail Authority*  
5 *pursuant to subdivisions (b) or (f) of Section 185036 of the Public*  
6 *Utilities Code.*

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9  
10 **All matter omitted in this version of the bill**  
11 **appears in the bill as amended in the**  
12 **Senate, June 1, 2011. (JR11)**